IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

STATE OF TEXAS, *Appellant,*

vs.

UNITED STATES OF AMERICA, *Appellee.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

APPENDIX TO JURISDICTIONAL STATEMENT FOR STATE APPELLANT

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Filed March 5, 1997

STATE OF TEXAS, Plaintiff,	:	
v.	:	
	:	Civil Action
UNITED STATES OF AMERICA, Defendant.	:	No. 96-1274 (JWR (USCA), AER, GK)

MEMORANDUM OPINION OF THE THREE-JUDGE COURT UNDER THE VOTING RIGHTS ACT

Before Rogers, U.S. Circuit Judge, Robinson, Senior U.S. District Judge, and Kessler, U.S. District Judge.

Opinion for the Court by Kessler, J.

APPEARANCES

FOR THE PLAINTIFF: Javier Aguilar, Office of the Attorney General of the State of Texas, Austin Texas. With him on the pleadings were Dan Morales, Jorge Vega, and Deborah A. Verbil of the Office of the Attorney General of the State of Texas, Austin, Texas.

FOR THE DEFENDANT: Robert A. Kengle, United States Department of Justice, Voting Section, Civil Rights Division, Washington, D.C. With him on the pleadings were Elizabeth Johnson and Donna M. Murphy, Voting Section, Civil Rights Division, United States Department of Justice; Deval L. Patrick, Assistant Attorney General, Washington, D.C.; and Eric H. Holder, Jr., United States Attorney, Washington, D.C.

I. INTRODUCTION

Plaintiff, the State of Texas, seeks a declaratory judgment that the preclearance provisions of section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, do not apply to §§ 39.131(a)(7) and (8) of the Texas Education Code or, alternatively, that they do not apply to actions taken pursuant to the Education Flexibility Partnership Demonstration Act, 20 U.S.C. § 5891(e), to conform with § 39.131 of the Texas Education Code. Three motions are pending before the Court: (1) Defendant United States' Motion to Dismiss, or in the Alternative, for Judgment on the Pleadings; (2) United States' Motion to Strike; and (3) Texas' Motion for Summary Judgment. For the reasons discussed below, we **grant** the United States' Motion to Dismiss because the issues presented are not ripe for judicial review.[1]

II. Background[2]

In 1995, the Texas Legislature enacted Chapter 39 of the Texas Education Code ("Chapter 39") as part of Texas Senate Bill 1 ("S.B. 1"). Chapter 39 created an assessment system designed to hold Texas school districts accountable for academic performance levels based on a state administered exam. Compl. ¶¶ 7, 19.

Chapter 39 authorizes the Commissioner of Education ("Commissioner") to impose sanctions on school districts under certain circumstances, including lowered or unimproved accreditation ratings or violations of federal law or regulations regarding federally-required or funded programs. Moreover,

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[1] Because of our disposition of Defendant's Motion to Dismiss, the remaining motions need not be decided.

[2] When deciding a Motion to Dismiss, the court must presume the allegations of a plaintiff's complaint to be true and construe them liberally in its favor. Shear v. National Rifle Ass'n of Am., 606 F.2d 1251, 1253 (D.C. Cir. 1979). All background information is taken from Plaintiff's Complaint ("Compl.").

the Commissioner is authorized to impose sanctions on a district if an investigation reveals a violation of the state's accountability system, required accounting and financial practices, excessive alternative placements, violation of civil rights or other federally-imposed requirements, or violation of the legally-established roles of superintendent and board of trustees. Compl. ¶¶ 7, 8.

Section 39.131(a) sets forth the sanctions that the Commissioner may impose on a school district "to the extent the Commissioner determines necessary." Of the ten possible sanctions listed in section 39.131(a), two form the core of this litigation: section 39.131(a)(7), which authorizes the Commissioner to appoint a master to oversee a district's operations, and section 39.131(a)(8), which authorizes the Commissioner to appoint a management team to direct the operations of the district in areas of unacceptable performance. Compl. ¶¶ 9-11.

The State of Texas is a jurisdiction covered by section 5 of the Voting Rights Act ("section 5") and must, therefore, obtain preclearance from this Court or from the United States Attorney General (the "Attorney General") prior to implementing changes affecting voting. Compl. ¶¶ 1, 3. After S.B. 1 was passed, Texas submitted portions of the statute to the Attorney General for preclearance. Texas submitted the sanctions provisions of § 39.131 under protest. The Attorney General determined that the sanctions provided for in § 39.131(a)(1)-(6) did not require preclearance. However, she also concluded that Texas must obtain preclearance in each instance that it appoints a master or a management team to a school district under § 39.131(a)(7) or (8). Compl. ¶ 19.

III. Analysis

The United States has moved to dismiss the Complaint on the ground that Texas' claim is not ripe for judicial review. Before addressing that argument, we note that Texas has presented a claim that does not fit neatly into the statutory framework of section 5. Section 5 prohibits covered

jurisdictions from enforcing any change that affects voting without first obtaining "preclearance" either administratively, through the Attorney General, or judicially, through the United States District Court for the District of Columbia. 42 U.S.C. § 1973c.

There are at least three types of actions that may be brought under section 5. Allen v. State Bd. of Elections, 393 U.S. 544, 561 (1969). First, a state may bring an action for judicial preclearance, seeking a declaration that the new rule was not enacted for a discriminatory purpose and will not have a discriminatory effect. Id. Second, an individual may bring a private enforcement action for declaratory judgment and injunctive relief in a local federal district court to block a jurisdiction from enforcing a change that has not been precleared. Id. at 554-57, 561. Finally, the Attorney General may bring an enforcement action. Id. at 561. The jurisdiction of a district court in an enforcement action is quite limited; the court may not make the preclearance determination for itself but must confine its inquiry to whether the enactment at issue was required to be precleared, whether it has been precleared, and what temporary remedy, if any, is appropriate. Lopez v. Monterey County, 117 S. Cit. 340, 349 (1996); United States v. Board of Supervisors, 429 U.S. 642, 645-47 (1977) (per curiam); Perkins v. Matthews, 400 U.S. 379, 383-85 (1971).

Texas' lawsuit does not fall clearly into any of these three categories. In particular, Texas is not seeking preclearance of its legislation. See Texas' Application for a three-judge court, filed June 7, 1996, at 2. Rather, it seeks a blanket determination that any action pursuant to the Commissioner's new authority under Chapter 39 would not be a change covered by section 5. The statutory basis for jurisdiction over such an action is unclear. Although this Court has addressed issues of section 5 coverage in the past, those claims have arisen in the context of an action for judicial preclearance. See State of Texas v. United States, 866 F. Supp. 20, 24-26 (D.D.C. 1994); State of Texas v. United States, 785

F. Supp. 201, 205-206 (D.D.C. 1992); County Council v. United States, 555 F. Supp. 694, 700-702 (D.D.C. 1983). Even if a statutory basis for jurisdiction exists, however, it is unclear whether such an action would involve a "case or controversy" sufficient to satisfy the requirement of Article III of the Constitution. We need not address these issues, however, because we conclude that the instant case is not ripe for judicial review.

The doctrine of ripeness has an Article III component and a prudential component. National Treasury Employees Union v. United States, 101 F.3d 1423, 1427 (D.C. Cir. 1996) ("NTEU"). The Article III component is closely linked to the doctrine of standing, and "shares the constitutional requirement that an injury-in-fact be certainly impending." Id. Even where this constitutional requirement is satisfied, however, the prudential component of the doctrine requires a court to evaluate "the fitness of the issues for judicial consideration and the hardship to the parties of withholding court consideration." Abbott Labs. Inc. v. Gardner, 387 U.S. 136, 149 (1967). Although the United States refers to the constitutional component of ripeness, its motion focuses primarily on the prudential component of the doctrine. We conclude that neither aspect of the doctrine is satisfied.

A. Article III Ripeness

With regard to the Article III component of the ripeness doctrine, Texas asserts that the injuries it will sustain are "the diminution of the quality of education of all Texas school children," Texas' Response at 3, and an inability to "mov[e] promptly and efficiently to safeguard the education of its children." Id. at 7.

These are important considerations. However, these injuries are not sufficiently imminent to create a justiciable controversy. If the State of Texas seeks to appoint a management committee or master, it will have two methods for seeking a determination of the applicability of the Voting Rights Act to such appointment: preclearance by the Attorney General

or recourse to this Court. Texas' argument assumes that neither the Attorney General nor the courts will grant preclearance, or that proceedings will not be handled expeditiously. These assumptions are, simply, too speculative to sustain a claim. When a "case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all," 13A Wright et al., Federal Practice and Procedure: Jurisdiction 2d § 3532 (1984), Article III's imminence requirement is not satisfied. See Natural Resources Defense Council v. E.P.A., 589 F.2d 156, 166 (D.C. Cir. 1988) (citations and internal quotations omitted).

B. Prudential Ripeness Concerns

To determine whether a particular case meets the prudential aspect of the ripeness doctrine, the court applies the two prong test set forth in Abbott Labs., supra; City of Houston, Tex. v. Department of Housing and Urban Dev., 24 F.3d. 1421, 1430-31 (D.C. Cir. 1994); NTEU, 101 F.3d at 1431. Both prongs of the test must be satisfied before a court may hear a case and render a decision on the merits. Chamber of Commerce of the U.S. v. Reich, 57 F.3d 1099, 1100 (D.C. Cir. 1995) (per curiam).

Under the "fitness of the issues" prong of Abbott Laboratories, the first question for the court is whether this lawsuit raises purely legal questions and is therefore "presumptively suitable for judicial review." City of Houston, 24 F.3d at 1430-31 (quoting Better Gov't Ass'n v. Department of State, 780 F.2d 86, 92 (D.C. Cir. 1986)). Judicial action is not appropriate where a claim is dependent on issues of fact. Office of Communication of the United Church of Christ v. F.E.C., 826 F.2d 101, 105 (D.C. Cir. 1987). Even if the claim raises only legal issues, however, the court must also consider whether it or the parties would benefit from postponing review until the challenged issue has "sufficiently 'crystallized' by taking on a more definite form." City of Houston, 24 F.3d at 1431 (quoting Better Gov't, 780 F.2d at 92).

Under the statutory scheme contained in Section 5, when preclearance is not granted, as in this case, the political entity must seek a determination each time it seeks to act that its action does not abridge voting rights in a discriminatory manner.

Texas argues that its claim presents a purely legal issue of statutory interpretation, namely, whether § 39.131 constitutes a change affecting voting requiring preclearance under section 5 of the Voting Rights Act. In effect, it asks for a blanket determination that no appointment under Chapter 39 will ever abridge voting rights in a prohibited manner.

Texas concedes that Chapter 39 sanctions, which are designed to give the Commissioner the "necessary tools with which to deal with serious problems that threaten the educational process in a district", are broad, discretionary, and will be delegated so as to respond to a host of different precipitating circumstances. Thus, the "actual contours of [each appointment order] will be determinative of" whether an elected board is displaced or its powers in any way diminished. City of Houston, 24 F.3d at 1431. The broad discretion accorded the Commissioner under the statute demonstrates the necessity of examining the full factual context in which she is acting before deciding whether an action can be precleared. Put simply, that discretion makes the statute one that cannot be analyzed uniformly in Section 5 terms.

Plaintiff relies on Texas v. United States, 866 F. Supp. 20 (D.D.C. 1994) (three-judge court), to support its contention that a blanket preclearance determination can be made in the absence of an actual appointment. In that case, Texas sought preclearance for legislation creating a new water authority governed by an appointed board of directors. 866 F. Supp. at 22-23. That same piece of legislation abolished a water district governed by an elected body. Id. at 22-23. Since de facto replacement of an elected board by an appointed board constitutes a change affecting voting rights under the Voting Rights Act, the specific question at issue was whether the

legislation would affect such a replacement. Id. Texas contended that, since the new authority was not yet functional, it would be impossible to determine whether it was a de facto replacement for the elected district. Id. at 25. The court examined the statute creating the new authority and compared the overlap in function, geography, and control of the new authority and the existing district. The court then held, as a matter of law, that the statute required preclearance because any implementation of the statute would have some effect on voting rights. Id.

United States v. Texas is distinguishable. In that case, one single appointed body was being created that had the potential to interfere with one single elected body in one predetermined way. The statute at issue in this case, by contrast, gives such wide discretion and flexibility to the Commissioner that, absent an actual appointment, there is no way to determine whether an elected school board will be replaced or its powers diminished. Thus, United States v. Texas, confirms our view that this case is not ripe for decision.[3]

Further, the parties cite no prior decision where a district court has addressed section 5 preclearance without a particular challenged voting practice or procedure before it. "Judicial review of this issue 'is likely to stand on a much surer footing in the context of a specific application . . . than could be the case in the framework of the generalized challenge made here.'" City of Houston, 24 F.3d at 1431 (quoting Toilet Goods Ass'n v. Gardner, 387 U.S. 158, 163 (1967)). For all of these reasons, the first prong of the Abbot test is not met and this controversy is not ripe for review.

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[3] The parties also cite Casias v. Moses, No. SA-95-CA-0221 (W.D. Tex. May 11, 1995) (three-judge court) (unpublished). That case is inapposite as it involved the granting of a preliminary injunction pending a determination of whether preclearance was required and did not address the actual merits of the underlying section 5 claim.

The second prong of the Abbott test requires the Court to consider whether withholding judicial decision would cause undue hardship to the party seeking review. City of Houston, 24 F.3d. at 2431-32 (citation omitted); NTEU, 101 F.3d at 1431. Although the determination that Texas will not suffer undue hardship if judicial review is withheld is not necessary to our holding, the Court finds that this second prudential requirement is not met.

Texas alleges that requiring it to seek preclearance each time the Commissioner places a management team or a master in a school district would prevent it from "moving promptly and efficiently to safeguard the education of its children." Texas' Response at 7. This allegation is so vague that it "really amounts only to a complaint that this issue remains unresolved." City of Houston, 24 F.3d at 1432. Again, the Court is unwilling to assume that administrative or judicial preclearance will prove so unwieldly as to deny Texas a meaningful opportunity to expeditiously implement its statutory scheme. Even assuming, arguendo, that Texas is correct, Congress has made the decision that the protection of voting rights outweighs any other State concerns. It is Congress which has struck the balance in favor of preclearance to protect voting interest over school district changes to improve the education process.

Thus, for all the foregoing reasons, we conclude that even if Texas had shown an Article III injury, the State has failed to show under the prudential aspect of the ripeness doctrine, that the court would not be "wasting [its] resources by prematurely entangling [it] in abstract disagreement." NTEU, 101 F.3d at 1431.

IV. Conclusion

Texas has failed to establish that its claim is ripe for judicial review. Thus, the United States' Motion to Dismiss is **granted**.

An Order will issue with this Opinion.

March 5, 1997 /s/
DATE GLADYS KESSLER
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Filed March 5, 1997

STATE OF TEXAS, Plaintiff, v. UNITED STATES OF AMERICA, Defendant.	:	Civil Action No. 96-1274 (JWR (USCA), AER, GK)

ORDER

Plaintiff, the State of Texas, seeks a declaratory judgment that the preclearance provisions under section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, do not apply to §§ 39.131(a)(7) and (8) of the Texas Education Code or, alternatively that they do not apply to actions taken pursuant to the Education Flexibility Partnership Demonstration Act, 20 U.S.C. § 5891(e), to conform with § 39.131 of the Texas Education Code. Three motions are pending before the Court: (1) Defendant United States' Motion to Dismiss [13-1], or in the Alternative, for Judgment on the Pleadings [13-2]; (2) Defendant United States' Motion to Strike [14-1]; and (3) Plaintiff Texas' Motion for Summary Judgment [12-1]. For the reasons discussed in the accompanying memorandum decision, it is this 5th day of March, 1997, hereby

ORDERED, that the Defendant's Motion to Dismiss [13-1] is **granted**; it is further

ORDERED, that, in view of the dismissal of this case, Defendant's Motion for Judgment on the Pleadings [13-2], Defendant's Motion to Strike [14-1], and Plaintiff's Motion for Summary Judgment [12-1] are **denied**.

/s/
GLADYS KESSLER
UNITED STATES DISTRICT JUDGE

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Washington, D.C 20530

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Filed March 17, 1997

STATE OF TEXAS, Plaintiff,	:	
v.	:	
	:	Civil Action
UNITED STATES OF AMERICA,	:	No. 96-1274
Defendant.	:	(JWR (USCA), AER, GK)

AMENDED[1] MEMORANDUM OPINION OF THE THREE-JUDGE COURT UNDER THE VOTING RIGHTS ACT

Before Rogers, U.S. Circuit Judge, Robinson, Senior U.S. District Judge, and Kessler, U.S. District Judge.

Opinion for the Court by Kessler, J.

APPEARANCES

FOR THE PLAINTIFF: Javier Aguilar, Office of the Attorney General of the State of Texas, Austin Texas. With him on the pleadings were Dan Morales, Jorge Vega, and Deborah A. Verbil of the Office of the Attorney General of the State of Texas, Austin, Texas.

FOR THE DEFENDANT: Robert A. Kengle, United States Department of Justice, Voting Section, Civil Rights Division,

[1] The Amended Memorandum Opinion of the Three-Judge Court Under the Voting Rights Act contains the signatures of all three participating judges.

Washington, D.C. With him on the pleadings were Elizabeth Johnson and Donna M. Murphy, Voting Section, Civil Rights Division, United States Department of Justice; Deval L. Patrick, Assistant Attorney General, Washington, D.C.; and Eric H. Holder, Jr., United States Attorney, Washington, D.C.

I. INTRODUCTION

Plaintiff, the State of Texas, seeks a declaratory judgment that the preclearance provisions of section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, do not apply to §§ 39.131(a)(7) and (8) of the Texas Education Code or, alternatively, that they do not apply to actions taken pursuant to the Education Flexibility Partnership Demonstration Act, 20 U.S.C. § 5891(e), to conform with § 39.131 of the Texas Education Code. Three motions are pending before the Court: (1) Defendant United States' Motion to Dismiss, or in the Alternative, for Judgment on the Pleadings; (2) United States' Motion to Strike; and (3) Texas' Motion for Summary Judgment. For the reasons discussed below, we **grant** the United States' Motion to Dismiss because the issues presented are not ripe for judicial review.[2]

II. Background[3]

In 1995, the Texas Legislature enacted Chapter 39 of the Texas Education Code ("Chapter 39") as part of Texas Senate Bill 1 ("S.B. 1"). Chapter 39 created an assessment system designed to hold Texas school districts accountable for

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[2] Because of our disposition of Defendant's Motion to Dismiss, the remaining motions need not be decided.

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Section 39.131(a) sets forth the sanctions that the Commissioner may impose on a school district "to the extent the Commissioner determines necessary." Of the ten possible sanctions listed in section 39.131(a), two form the core of this litigation: section 39.131(a)(7), which authorizes the Commissioner to appoint a master to oversee a district's operations, and section 39.131(a)(8), which authorizes the Commissioner to appoint a management team to direct the operations of the district in areas of unacceptable performance. Compl. ¶¶ 9-11.

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III. Analysis

The United States has moved to dismiss the Complaint on the ground that Texas' claim is not ripe for judicial review. Before addressing that argument, we note that Texas has presented a claim that does not fit neatly into the statutory framework of section 5. Section 5 prohibits covered jurisdictions from enforcing any change that affects voting without first obtaining "preclearance" either administratively, through the Attorney General, or judicially, through the United States District Court for the District of Columbia. 42 U.S.C. § 1973c.

There are at least three types of actions that may be brought under section 5. Allen v. State Bd. of Elections, 393 U.S. 544, 561 (1969). First, a state may bring an action for judicial preclearance, seeking a declaration that the new rule was not enacted for a discriminatory purpose and will not have a discriminatory effect. Id. Second, an individual may bring a private enforcement action for declaratory judgment and injunctive relief in a local federal district court to block a jurisdiction from enforcing a change that has not been precleared. Id. at 554-57, 561. Finally, the Attorney General may bring an enforcement action. Id. at 561. The jurisdiction of a district court in an enforcement action is quite limited; the court may not make the preclearance determination for itself but must confine its inquiry to whether the enactment at issue was required to be precleared, whether it has been precleared, and what temporary remedy, if any, is appropriate. Lopez v. Monterey County, 117 S. Cit. 340, 349 (1996); United States v. Board of Supervisors, 429 U.S. 642, 645-47 (1977) (per curiam); Perkins v. Matthews, 400 U.S. 379, 383-85 (1971).

Texas' lawsuit does not fall clearly into any of these three categories. In particular, Texas is not seeking preclearance of its legislation. See Texas' Application for a three-judge court, filed June 7, 1996, at 2. Rather, it seeks a

blanket determination that any action pursuant to the Commissioner's new authority under Chapter 39 would not be a change covered by section 5. The statutory basis for jurisdiction over such an action is unclear. Although this Court has addressed issues of section 5 coverage in the past, those claims have arisen in the context of an action for judicial preclearance. See State of Texas v. United States, 866 F. Supp. 20, 24-26 (D.D.C. 1994); State of Texas v. United States, 785 F. Supp. 201, 205-206 (D.D.C. 1992); County Council v. United States, 555 F. Supp. 694, 700-702 (D.D.C. 1983). Even if a statutory basis for jurisdiction exists, however, it is unclear whether such an action would involve a "case or controversy" sufficient to satisfy the requirement of Article III of the Constitution. We need not address these issues, however, because we conclude that the instant case is not ripe for judicial review.

The doctrine of ripeness has an Article III component and a prudential component. National Treasury Employees Union v. United States, 101 F.3d 1423, 1427 (D.C. Cir. 1996) ("NTEU"). The Article III component is closely linked to the doctrine of standing, and "shares the constitutional requirement that an injury-in-fact be certainly impending." Id. Even where this constitutional requirement is satisfied, however, the prudential component of the doctrine requires a court to evaluate "the fitness of the issues for judicial consideration and the hardship to the parties of withholding court consideration." Abbott Labs. Inc. v. Gardner, 387 U.S. 136, 149 (1967). Although the United States refers to the constitutional component of ripeness, its motion focuses primarily on the prudential component of the doctrine. We conclude that neither aspect of the doctrine is satisfied.

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"mov[e] promptly and efficiently to safeguard the education of its children." Id. at 7.

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B. Prudential Ripeness Concerns

To determine whether a particular case meets the prudential aspect of the ripeness doctrine, the court applies the two prong test set forth in Abbott Labs., supra; City of Houston, Tex. v. Department of Housing and Urban Dev., 24 F.3d. 1421, 1430-31 (D.C. Cir. 1994); NTEU, 101 F.3d at 1431. Both prongs of the test must be satisfied before a court may hear a case and render a decision on the merits. Chamber of Commerce of the U.S. v. Reich, 57 F.3d 1099, 1100 (D.C. Cir. 1995) (per curiam).

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Office of Communication of the United Church of Christ v. F.E.C., 826 F.2d 101, 105 (D.C. Cir. 1987). Even if the claim raises only legal issues, however, the court must also consider whether it or the parties would benefit from postponing review until the challenged issue has "sufficiently 'crystallized' by taking on a more definite form." City of Houston, 24 F.3d at 1431 (quoting Better Gov't, 780 F.2d at 92).

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Texas argues that its claim presents a purely legal issue of statutory interpretation, namely, whether § 39.131 constitutes a change affecting voting requiring preclearance under section 5 of the Voting Rights Act. In effect, it asks for a blanket determination that no appointment under Chapter 39 will ever abridge voting rights in a prohibited manner.

Texas concedes that Chapter 39 sanctions, which are designed to give the Commissioner the "necessary tools with which to deal with serious problems that threaten the educational process in a district", are broad, discretionary, and will be delegated so as to respond to a host of different precipitating circumstances. Thus, the "actual contours of [each appointment order] will be determinative of" whether an elected board is displaced or its powers in any way diminished. City of Houston, 24 F.3d at 1431. The broad discretion accorded the Commissioner under the statute demonstrates the necessity of examining the full factual context in which she is acting before deciding whether an action can be precleared. Put simply, that discretion makes the statute one that cannot be analyzed uniformly in Section 5 terms.

Plaintiff relies on Texas v. United States, 866 F. Supp. 20 (D.D.C. 1994) (three-judge court), to support is contention that a blanket preclearance determination can be made in the absence of an actual appointment. In that case, Texas sought

preclearance for legislation creating a new water authority governed by an appointed board of directors. 866 F. Supp. at 22-23. That same piece of legislation abolished a water district governed by an elected body. Id. at 22-23. Since de facto replacement of an elected board by an appointed board constitutes a change affecting voting rights under the Voting Rights Act, the specific question at issue was whether the legislation would affect such a replacement. Id. Texas contended that, since the new authority was not yet functional, it would be impossible to determine whether it was a de facto replacement for the elected district. Id. at 25. The court examined the statute creating the new authority and compared the overlap in function, geography, and control of the new authority and the existing district. The court then held, as a matter of law, that the statute required preclearance because any implementation of the statute would have some effect on voting rights. Id.

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[4] The parties also cite Casias v. Moses, No. SA-95-CA-0221 (W.D. Tex. May 11, 1995) (three-judge court) (unpublished). That case is inapposite as it involved the granting of a preliminary injunction pending a determination of whether preclearance was required and did not address the actual merits of the underlying section 5 claim.

footing in the context of a specific application . . . than could be the case in the framework of the generalized challenge made here.'" City of Houston, 24 F.3d at 1431 (quoting Toilet Goods Ass'n v. Gardner, 387 U.S. 158, 163 (1967)). For all of these reasons, the first prong of the Abbot test is not met and this controversy is not ripe for review.

The second prong of the Abbott test requires the Court to consider whether withholding judicial decision would cause undue hardship to the party seeking review. City of Houston, 24 F.3d. at 2431-32 (citation omitted); NTEU, 101 F.3d at 1431. Although the determination that Texas will not suffer undue hardship if judicial review is withheld is not necessary to our holding, the Court finds that this second prudential requirement is not met.

Texas alleges that requiring it to seek preclearance each time the Commissioner places a management team or a master in a school district would prevent it from "moving promptly and efficiently to safeguard the education of its children." Texas' Response at 7. This allegation is so vague that it "really amounts only to a complaint that this issue remains unresolved." City of Houston, 24 F.3d at 1432. Again, the Court is unwilling to assume that administrative or judicial preclearance will prove so unwieldly as to deny Texas a meaningful opportunity to expeditiously implement its statutory scheme. Even assuming, arguendo, that Texas is correct, Congress has made the decision that the protection of voting rights outweighs any other State concerns. It is Congress which has struck the balance in favor of preclearance to protect voting interest over school district changes to improve the education process.

Thus, for all the foregoing reasons, we conclude that even if Texas had shown an Article III injury, the State has failed to show under the prudential aspect of the ripeness doctrine, that the court would not be "wasting [its] resources by prematurely entangling [it] in abstract disagreement." NTEU, 101 F.3d at 1431.

IV. Conclusion

Texas has failed to establish that its claim is ripe for judicial review. Thus, the United States' Motion to Dismiss is **granted**.

An Order will issue with this Opinion.

March 7, 1977 /s/
DATE JUDITH W. ROGERS
UNITED STATES CIRCUIT JUDGE

March 6, 1997 /s/
DATE GLADYS KESSLER
UNITED STATES DISTRICT JUDGE

March 13, 1997 /s/
DATE AUBREY E. ROBINSON, JR.
UNITED STATES SENIOR DISTRICT JUDGE

Copies To:

U.S. Department of Justice
Assistant Attorney General
Civil Rights Division
Washington, D.C. 20530

Javier Aguilar
Special Assistant Attorney General
P.O. Box 12548, Capitol Station
Austin, TX 78711-2548

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Filed March 17, 1997

STATE OF TEXAS, Plaintiff, v. UNITED STATES OF AMERICA, Defendant.	: : : : : :	Civil Action No. 96-1274 (JWR (USCA), AER, GK)

AMENDED[1] ORDER

Plaintiff, the State of Texas, seeks a declaratory judgment that the preclearance provisions under section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, do not apply to §§ 39.131(a)(7) and (8) of the Texas Education Code or, alternatively that they do not apply to actions taken pursuant to the Education Flexibility Partnership Demonstration Act, 20 U.S.C. § 5891(e), to conform with § 39.131 of the Texas Education Code. Three motions are pending before the Court: (1) Defendant United States' Motion to Dismiss [13-1], or in the Alternative, for Judgment on the Pleadings [13-2]; (2) Defendant United States' Motion to Strike [14-1]; and (3) Plaintiff Texas' Motion for Summary Judgment [12-1]. For the reasons discussed in the accompanying memorandum decision, it is this *17th* day of March, 1997, hereby

ORDERED, that the Defendant's Motion to Dismiss [13-1] is **granted**; it is further

ORDERED, that, in view of the dismissal of this case, Defendant's Motion for Judgment on the Pleadings [13-2],

[1] The Amended Order contains the signatures of all three participating judges.

Defendant's Motion to Strike [14-1], and Plaintiff's Motion for Summary Judgment [12-1] are **denied**.

/s/
JUDITH W. ROGERS
UNITED STATES CIRCUIT JUDGE

/s/
GLADYS KESSLER
UNITED STATES DISTRICT JUDGE

/s/
AUBREY E. ROBINSON, JR.
UNITED STATES SENIOR
DISTRICT JUDGE

Copies To:

U.S. Department of Justice
Assistant Attorney General
Civil Rights Division
Washington, D.C 20530

Javier Aguilar
Special Assistant Attorney General
P. O. Box 12548, Capitol Station
Austin, TX 78711-2548

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Filed April 23, 1997

STATE OF TEXAS, Plaintiff,	*	
	*	Civil Action
v.	*	No. 96-1274 (GK)
UNITED STATES OF AMERICA, Defendant.	*	

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Pursuant to Rule 18.1 of the rules of the Supreme Court of the United States, notice is given that the State of Texas appeals to the Supreme Court of the United States from the three-judge Court's Order of March 5, 1997, granting the United States' Motion to Dismiss, and denying the State of Texas' Motion for Summary Judgment.

This appeal is taken pursuant to 42 U.S.C. § 1973c, and 28 U.S.C. § 2101(b).

Respectfully submitted,
DAN MORALES
Attorney General of Texas

JORGE VEGA
First Assistant Attorney General

/s/
JAVIER AGUILAR
Special Assistant Attorney General

DEBORAH A. VERBIL
Special Assistant Attorney General

P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2191
(512) 463-2063 FAX
ATTORNEYS FOR STATE OF TEXAS

CERTIFICATE OF SERVICE

I hereby certify that I forwarded a copy of the foregoing document via certified mail return receipt requested to ROBERT A. KENGLE, Attorney, Department of Justice, Voting Section, Civil Rights Division, 320 1st St., N.W., Room 826, Washington, D.C. 20534, on this 22nd day of April, 1997.

/s/
JAVIER AGUILAR
Special Assistant Attorney General

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Filed May 12, 1997

STATE OF TEXAS, Plaintiff,	*
	*Civil Action
v.	*No. 96-1274 (GK)
UNITED STATES OF AMERICA, Defendant.	*

SUPPLEMENTAL NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Pursuant to Rule 18.1 of the Rules of the Supreme Court of the United States, notice is given that the State of Texas appeals to the Supreme Court of the United States from the Court's Order of March 5, 1997, and the Amended Order of March 17, 1997, granting the United States' Motion to Dismiss, and denying the State of Texas' Motion for Summary Judgment.

This appeal is taken pursuant to 42 U.S.C. § 1973c, and 28 U.S.C. § 2101(b).

Respectfully submitted,
D AN MORALES
Attorney General of Texas

JORGE VEGA
First Assistant Attorney General

/s/
JAVIER AGUILAR
Special Assistant Attorney General

DEBORAH A. VERBIL
Special Assistant Attorney General

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(512) 463-2191, (512) 463-2063 FAX

CERTIFICATE OF SERVICE

I hereby certify that I forwarded a copy of the foregoing document via certified mail return receipt requested to ROBERT A. KENGLE, Attorney, Department of Justice, Voting Section, Civil Rights Division, 320 1st St., N.W., Room 826, Washington, D.C. 20534, on this 9th day of May, 1997.

/s/
JAVIER AGUILAR
Special Assistant Attorney General

June 12, 1995

Assistant Attorney General
U.S. Department of Justice
Civil Rights Division
Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

Re: Submission under Section 5, Voting Rights Act, of Senate Bill 1, 74th Legislature, 1995.

EXPEDITED REVIEW REQUESTED

Dear Sir or Madam:

The legislature of the State of Texas has enacted Senate Bill 1, 74th Legislature, 1995, which concerns revision of the Texas Education Code.

Pursuant to the requirements of 28 C.F.R. § 51.27, the following information is submitted with respect to this Act:

(a) & (b) A certified copy of the Act is enacted herewith.

(c) The State respectfully requests expedited consideration. Senate Bill 1 comprises amendments to and recodification of substantial portions of the Texas Education Code.

Senate Bill 7, 1993, 73rd Legislature, required that by September 1, 1995, the Education Code, with the exception of its school finance chapters, be repealed. Senate Bill 7 instructed the Commissioner of Education to propose revisions of the Education Code, which was completed in July of 1994. Senate Bill 7 also created the Joint Select

Committee to Review the Central Education Agency to focus attention on the delivery of educational programs and services in the Texas public school system. The Joint Committee, made up of five senators, five representatives, and seven public members, adopted 64 recommendations that included suggestions to adopt a single set of measurable goals for public education, impose a zero tolerance student discipline program, create a State Board for Educator Certification and look into certain "school choice" options such as intradistrict transfers, magnet schools, and charter schools.

It is our understanding that many of the over 1000 school districts in Texas will need to proceed as soon as possible in order to implement various provisions of the Act for the 1995-1996 school year. The need for expedited review is especially necessary insofar as the school districts will need to allow time for their own local submissions to the Department if they make changes based on the enabling legislation. We request expedited review as to the entire Act. In the event the Department concludes that any portion of the Act precludes expedited review, we respectfully urge the Department to grant partial preclearance to the remainder on an expedited basis.

The changes to election-related procedures are described below. In a number of instances, certain provisions either substantially recodify current law which has been precleared, or do not effect election-related changes in the opinion of our office; however, we enclose the entire text of Senate Bill 1 for your reference. For your convenience, in lieu of photocopies of the relevant provisions from Texas Vernon's Civil Statutes, we enclose the 1994 Texas School Law Bulletin, (published by West Publishing Company, in cooperation with the Texas Education Agency), which reflects the existing law in the Texas Education Code, the

Texas Tax Code, the Texas Government Code, and the Texas Election Code. Notwithstanding the repeal of many of the Education Code provisions and the effective dates of Senate Bill 1 (1995), references to "existing" or "current" law are to the Education Code prior to SB 1 (1995); references to "new" or "proposed" law are to SB 1 enactments. All references are to the Texas Education Code, unless otherwise cited.

. . .

CHAPTER 39. ACCOUNTABILITY

The accountability provisions under current law (Chapter 35) and the proposed law (Chapter 39) include the authority of the Texas Education Agency to send in a management team which could exercise the powers of the school board indefinitely. In recent litigation, issues arose concerning whether the temporary emergency exercise of authority by the management team amounted to a de facto replacement of the elected board with an appointive authority which might require submission and preclearance. Casias v. Moses, No. SA-95-CA-0221 (W.D. Tex. May 11, 1995) (order granting preliminary injunction).

Section 39.131(e). In partial response to the concerns voiced by the court, SB 1 changes the management team procedures as follows. New Section 39.131(e) provides, among other things, that the management team: (1) may not take any action concerning the conducting of the district's election, and may not change the number of or method of electing trustees; (2) may not set a tax rate for the district; and (3) may not adopt a budget that provides for spending a different amount from a previously adopted budget. In addition, the commissioner shall review the need for a master or management team at least every 90 days and shall remove the master or team unless the commissioner determines that the continued appointment is necessary.

Sections 39.131(g)-(h). The commissioner may also order a board of 15 managers to govern the school district. Under the board of managers, who must be residents of the district, the powers of the school district are suspended. In effect, the commissioner is appointing a new, temporary, 15-member school board, with more than double the resident membership of most boards. The elected school board may still submit amendments to the budget for the commissioner's consideration. This procedure in general codifies existing law which has been submitted to the Department as part of attachments to past submissions, (e.g., SB 7 (1993)), but the procedure was not previously identified as an election-related change, and has not been so addressed in the Department's 1993 correspondence to our office. In our opinion, as the permanent elective structure of the board of trustees is not altered by these temporary emergency procedures, neither this section nor the management team procedures in Section 39.131(e) are election-related, and do not require preclearance; nevertheless, we bring these sections to your attention for your consideration.

Section 39.131(a)(10) also cross-references the authority of the commissioner to consolidate an academically unacceptable district with another district pursuant to new Section 13.054, which recodifies existing law. In the case of a home-rule district, the commissioner may request the State Board of Education to revoke the charter.

. . .

CHARTER 39 (ACCOUNTABILITY)

Current law is at Chapter 35. Except for the noted changes, Chapter 39 codifies current Education Code Chapter 35. Chapter 35 was last amended by Senate Bill 7 (1993). The

State submitted a certified copy of the text of Senate Bill 7, but did not identify any of the Chapter 35 procedures as election-related changes, and they were not identified in the Department's preclearance letter of July 6, 1993, DJ File No. 93-1945.

. . .

Sincerely,

/s/

Antonio O. Garza, Jr.

AOG:TH:MB:id

Enclosures Minority Contacts
Certified Copy, Senate Bill 1
Texas School Law Bulletin, 1994 edition

December 11, 1995

The Honorable Antonio O. Garza, Jr.
Secretary of State
Elections Division
P. O. Box 12060
Austin, Texas 78711-2060

Dear Mr. Secretary:

This refers to Chapter 7, Subchapter D; Chapter 11, Subchapter C; Chapter 12; Chapter 13; and Chapter 39 of Senate Bill 1 (1995) which concern the Texas Education Code, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our August 14, 1995, request for additional information on October 10, 1995, supplemental information was received on December 4, 1995.

As you know, the State has an obligation under Section 5 of the Voting Rights Act to "identify with specificity, all voting changes contained in a submission. Clark v. Roemer, 500 U.S. 646, 658 (1991); see also Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, as amended, 28 C.F.R. 51.26 (d) and 51.27 (c). Because the State in its original submission did not identify with sufficient particularity all of the voting changes contained in Senate Bill 1 (1995), our August 14, 1995 letter left open the possibility that additional voting changes might be identified. In this regard, we now have identified several additional voting changes to be added to those enumerated in our earlier letter. Therefore, while this letter addresses all of the voting changes included in Senate Bill 1 that have been identified to date either by your letters or our review, if other voting changes contained therein subsequently are identified, they will be subject to Section 5 review.

. . .

We have considered the following voting changes contained in S.B. 1:

. . .

Chapter 39, which authorizes the Texas Education Agency to appoint a master, management team, and/or board of managers that will exercise the school boards' powers and thus replace school boards indefinitely; annex one school district to another; and revoke the charter of a home-rule school district.

. . .

In addition, the Attorney General does not interpose any objection to the following changes, which are enabling in nature and will require the State and/or local school districts proposing to implement voting changes pursuant to these provisions to seek Section 5 preclearance. See 28 C.F.R. 51.15. However, we have set these voting changes apart from those above, because it is apparent that under certain foreseeable circumstances their implementation may result in a violation of Section 5. As a result, we feel compelled to point out the potential voting rights problems the State and local school districts may encounter in adopting voting changes pursuant to these provisions.

. . .

With regard to Chapter 39, insofar as this provision authorizes the Texas Education Agency to do the following: appoint a master, management team, or board of managers that will exercise a school board's powers; annex one school district to another; and revoke the charter of a home-rule

school district, it clearly contains voting changes. See Bunton v. Patterson, 393 U.S. 544, 569-570 (1969) (companion case to Allen v. State Board of Elections); see also Presley v. Etowah County Commission, 502 U.S. 491 (1992); State of Texas v. United States, 866 F. Supp. 20 (D.C.C. 1994); Casias v. Moses, Civil Action No. SA-95-CA-0221 (W.D. Tx. May 11, 1995).

In particular, Senate Bill 1 retains the exact language (Sections 39.131(e)(1) and (2)), the Court in Casias v. Moses, Civil Action No. SA-95-CA-0221 (W.D. Tx. May 11, 1995), found "could result in the replacement of the elected Board with the appointed management team." Id. at 8. However, S.B. 1 slightly narrows the scope of the functions that may be performed by a master or management team (but not by a board of managers) by including language that prevents them from taking any action concerning a district election, changing the number of and method of selecting trustees, setting a tax rate for the district, or adopting or altering a budget for the school district. S.B. 1 also limits the duration of the appointment of a master or management team by requiring renewal every 90 days. However, these "limitations" do not exempt the State from the holding in Casias v. Moses, because S.B. 1 still potentially allows for the "take-over" of a school board such that the board cannot perform the functions that are its "reason for being." See State of Texas v. United States, 866 F. Supp. 20, 26 (D.C.C. 1994).

Thus, the Attorney General does not interpose any objection to the voting changes caused by Chapter 39, which are enabling in nature. However, any voting change made pursuant to Chapter 39 - including but not limited to the replacement, de facto or otherwise, of an elected school board by an appointed master management team, or board of managers, the annexation of one school district to another,

and the revocation of a home-rule school district's charter, — must either be brought before the District Court for the District of Columbia or submitted to the Attorney General for a determination that it does not have the purpose and will not have the effect of discriminating on account of race, color, or membership in a language minority group prior to their implementation. See 28 C.F.R. 51.10, 51.15.

. . .

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

By: /s/

for Elizabeth Johnson
Acting Chief, Voting Section

January 26, 1996

Honorable Michael A. Moses
Commissioner of Education
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

Dear Commissioner Moses:

It is my pleasure to inform you that I have selected Texas to be one of the six states to participate in the Education Flexibility Partnership Demonstration Program established by the Goals 2000: Educate America Act.

The Ed-Flex program is a striking example of the new partnership that this Administration is forming with States and communities to help every student learn to challenging standards. Texas's selection gives it the authority to grant waivers of the requirements of Federal education programs, as described below. Texas is granted authority to approve waivers not only for individual school districts and schools, but on a statewide basis.

Texas has demonstrated its commitment to promoting flexibility, accountability, and effective innovation in order to improve teaching and learning. Moreover, the State has put forth a strong plan for using Federal waiver authority effectively. I am confident that Texas, as an Ed-Flex Partnership State, will exercise its authority in a manner that furthers the objectives of its comprehensive plan for educational improvement and provides accountability for results.

In making this selection, I am approving the State's Ed-Flex plan and delegating to Texas the authority to waive

requirements applicable to specified programs in the Elementary and Secondary Education Act and the Perkins Act, subject to certain exclusions listed in the statute. This delegation is good for five years, and applies to waivers sought by individual local educational agencies and schools, as well as waivers that apply on a statewide basis. As you are aware, Ed-Flex does not, in any way, modify the State's obligations with respect to civil rights. The enclosed memorandum explains the waiver authority in greater detail.

Regarding the Texas Education Agency's separately pending waiver request concerning state review of changes or modifications in local consolidated plans, in light of the excellent progress that we have made in working with the Agency and in order to reach a timely resolution of the issues, we will continue to work with you on that request. Therefore, it is not covered in this delegation.

We intend to provide you with whatever further assistance you may need as Texas begins to evaluate specific waiver requests. Moreover, we anticipate working together in a variety of ways to ensure that this demonstration program will improve the Nation's understanding of how such authority can assist States to improve teaching and learning for all students.

Again, many congratulations on Texas's achievement.

Yours sincerely,
/s/
Richard W. Riley

Enclosure

cc: Honorable George W. Bush

In addition, the Secretary has determined that Federal health and safety requirements and Federal civil rights requirements may not be waived. Federal civil rights requirements include:

(1) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq., and regulations at 34 CFR Part 100;
(2) Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq., and regulations at 34 CFR Part 106;
(3) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and regulations at 34 CFR Part 104;
(4) The Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq.; and
(5) The Age Discrimination Act of 1975, 42 U.S.C. 6101 et seq., and regulations at 34 CFR Part 110.

The Secretary emphasizes that this delegation of authority does not, in any way, alter the obligations of the State with respect to any civil rights-related court orders which apply to the State. Also, the Secretary notes that the Individuals with Disabilities Education Act (IDEA) is not one of the enumerated programs covered by the Ed-Flex waiver authority.

Because parental participation and involvement requirements may not be waived, and the scope of the waiver authority may not be extended beyond requirements applicable to the enumerated programs. Texas is precluded from waiving requirements of the Family Educational Rights and Privacy Act (section 444 of GEPA) and the Protection of Pupil Rights Act (section 445 of GEPA).

In designating Texas as an Ed-Flex State, the Secretary does not necessarily endorse specific waiver examples included in the Ed-Flex plan. The Department will be happy to provide Texas with additional guidance on the scope of the Ed-Flex waiver authority, including further information on the exclusions discussed above.

Accountability

Texas is reminded of its responsibility under section 311(e)(7) of the Goals 2000 Act to monitor annually the activities of LEAs and schools receiving waivers under the Ed-Flex program, and to submit an annual report to the Secretary regarding progress toward achieving the objectives of its Ed-Flex plan. The Secretary emphasizes that the increased flexibility provided by Ed-Flex is in exchange for accountability for results and that Texas is accountable for the progress of all students under this demonstration. Texas should take any steps necessary to ascertain such progress, including disaggregation of data and testing of limited English proficient students, consistent with State law.

The Department will provide, at a later date, additional guidance to the State concerning monitoring and reporting requirements.

ED-FLEX FACT SHEET
January 29, 1996

What is Ed-Flex?

The Education Flexibility (Ed-Flex) Partnership Demonstration Program was established by the Goals 2000: Educate America Act. In exchange for increased accountability for results, Ed-Flex provides greater State and local flexibility in using Federal education funds to support locally-designed, comprehensive school improvement efforts.

Ed-Flex allows the Secretary of Education to delegate to up to six States, the authority to waive certain Federal statutory or regulatory requirements affecting the State and local school districts and schools. A State that has developed a comprehensive school improvement plan that has been approved by the Secretary may apply for Ed-Flex. In addition, the State must waive its own statutory or regulatory requirements, while holding districts and schools affected by the waivers accountable for the academic performance of their students.

Ed-Flex can help participating States and local school districts use Federal funds in the way that provides maximum support for effective school reform based on challenging academic standards for all students. Ed-Flex partnership States named to date included Oregon, Kansas, Massachusetts, Ohio, and now Texas.

How Can Ed-Flex Help Improve Education in Texas?

Participating in Ed-Flex is a natural next step in the efforts that Texas is making to develop an education system focused on high standards for all students, local flexibility, and strong accountability for results. Ed-Flex gives the Texas

Commissioner of Education the power to waive requirements of certain federal education programs, like the Title I program, or the Eisenhower Professional Development program. Before Ed-Flex, Texas could ask the Secretary of Education to waive these requirements; now, Texas has the authority to make those decisions at the state level.

If individual schools need waivers to carry out their local school reform efforts, they can seek a waiver from the Texas Education Agency. Likewise, based on experience and feedback from schools and local communities, the Commissioner can approve a single waiver that will apply to many districts across the state at one time. Texas will use the results of its Texas Assessment of Academic Skills and other approaches to monitor the effectiveness of waivers.

Which Federal Education Program Requirements May be Waived?

Under Ed-Flex, a State may waive requirements relating to several programs:

✓Title I of the Elementary and Secondary Education Act (ESEA), including:
✓Part A (Helping Disadvantaged Children Meet High Standards)
✓Part B (Even Start)
✓Part C (Migrant Education)
✓Part D (Neglected, Delinquent, and At-Risk Youth)
✓Title II of the ESEA (Eisenhower Professional Development)
✓Title IV of the ESEA (Safe and Drug-Free Schools and Communities)
✓Title VI of the ESEA (Innovative Education Program Strategies)

✓Title VII, Part C of the ESEA (Emergency Immigrant Education)
✓The Carl D. Perkins Vocational and Applied Technology Education Act

A State may also waive certain requirements of the General Education Provisions Act (GEPA) and the Education Department General Administrative Regulations (EDGAR) applicable to the covered programs.

Before granting a waiver, a State must first determine that the underlying purposes of the affected program will continue to be met.

What Requirements May Not Be Waived?

While the Ed-Flex waiver authority is broad, the law makes clear that some requirements may not be waived, including those pertaining to health, safety, and civil rights. In addition, the Individuals with Disabilities Education Act (IDEA) is not covered by Ed-Flex. Importantly, Ed-Flex does not, in any way, alter the obligations of a participating State with respect to any civil rights-related court orders. Such waivers would not be consistent the purpose of the Ed-Flex demonstration, which is to strengthen effective school reform efforts for all children.

The strong involvement of parents in their children's education is vital to successful school improvement efforts. The law makes clear the participating States are prohibited from waiving requirements relating to parental participation and involvement.

How Will Ed-Flex Work in Practices?

To see how Ed-Flex can work in practice, imagine that you are the superintendent of a small school district. The district has generally done well in all the areas on the TAAS test except reading, in which scores have been very disappointing. Principals, teachers, and parents at all the schools in the district are eager to raise the quality of their reading programs, and they have built strategies for addressing this need in the local school improvement plan.

In order for the local effort of succeed, one of the things the district will need is solid professional development for teachers. Federal Title II (Eisenhower) funds are available for this type of training, but because of the level of funding Congress has made available, most of the money is required to go into math and science education — even though these are the very subjects the district is performing best in.

After consulting with teachers, parents, and members of the business community, and with the consensus of local decision-making committees and the school board, you ask the Commissioner to waive the Eisenhower requirement so that, during the next three school years, you can devote up to 75% of your Title II funds to adopting an exciting new reading program based on high expectations for students. In exchange for this flexibility, and consistent with the local school plan, you pledge to make significant progress in several measures of student reading ability. In particular, you state that each year for the next three years, there will be an improvement of four percentage points in the number of students who demonstrate reading proficiency on the TAAS test.

After reviewing your request, the Commisioner agrees that the waiver will remove a barrier to the district's reform plan

and is consistent with the purposes of the Eisenhower program, and so the request is approved. Schools in your district can begin using 75% of their Eisenhower funds for professional development in reading. Each year you will report to the Commissioner on the progress you have made under your waiver, especially the progress you are making towards the student achievement goals you selected. The Commissioner will take this information into account in determining whether you should continue to have the waiver or, perhaps, whether the waiver should be extended.

If the Commissioner gets numerous requests from districts like yours, and determines that it will support the state's system-wide effort to improve education, he can decide to waive the requirement for virtually *any* district that requests the added flexibility in order to improve teaching and learning. Schools can then notify the Commissioner that they would like to participate, and appropriate schools will be approved.

Have Any Texas School Districts Previously Received Waivers of Federal Program Requirements?

Last year, the Fort Worth, Texas School District received a waiver allowing it to target an extra portion of its Title I dollars to four high poverty, inner-city elementary schools. The schools were chosen for a complete overhaul due to low achievement on the TAAS and other factors. Each school uses Title I funds to improve instruction for all its students and is reorganizing staff, lengthening the school year, focusing on teaching reading and math, providing extensive teacher training, and strengthening links to the community.

What Are Some Other Examples of Waivers That Can Be Given?

Here are two other waivers that have been approved by the Secretary, and which are representatives of the types of waivers Texas might consider in order to improve academic achievement.

As part of Oregon's comprehensive school improvement efforts, the State's Department of Education received a waiver to form innovative consortia, including both community colleges and school districts, for the use of Perkins funds. The consortia will receive Perkins funds to provide high quality vocational education programs to both high school and postsecondary students. Without the waiver, this type of collaboration would not have been possible.

Following careful planning, the Nash-Rocky Mount School District in North Carolina received a one-year head start on beginning a Title I schoolwide program in a high poverty elementary school. The school will use its funds to improve teaching and learning for all its students.

20 U.S.C. § 5801

§ 5801. Purpose

The purpose of this chapter is to provide a framework for meeting the National Education Goals established by subchapter I of this chapter by--

(1) promoting coherent, nationwide, systemic education reform;

(2) improving the quality of learning and teaching in the classroom and in the workplace;

(3) defining appropriate and coherent Federal, State, and local roles and responsibilities for education reform and lifelong learning;

(4) establishing valid and reliable mechanisms for--

(A) building a board national consensus on American education reform;

(B) assisting in the development and certification of high-quality, internationally competitive content and student performance standards; and

(C) assisting in the development and certification of high-quality assessment measures that reflect the internationally competitive content and student performance standards;

(D) Redesignated (C)

(5) supporting new initiatives at the Federal, State, local, and school levels to provide equal educational opportunity for all students to meet high academic and occupational skill standards and to succeed in the world of employment and civic participation;

(6) providing a framework for the reauthorization of all Federal education programs by--

(A) creating a vision of excellence and equity that will guide all Federal education and related programs;

(B) providing for the establishment of high-quality, internationally competitive content and student performance standards and strategies that all students will be expected to achieve;

(C) encouraging and enabling all State educational agencies and local educational agencies to develop comprehensive improvement plans that will provide a coherent framework for the implementation of reauthorized Federal education and related programs in an integrated fashion that effectively educates all children to prepare them to participate fully as workers, parents, citizens;

(D) providing resources to help individual schools, including those serving students with high needs, develop and implement comprehensive improvement plans; and

(E) promoting the use of technology to enable all students to achieve the National Education Goals;

(F) Redesignated (E)

(7) stimulating the development and adoption of a voluntary national system of skill standards and certification to serve as a cornerstone of the national strategy to enhance workforce skills; and

(8) assisting every elementary and secondary school that receives funds under this chapter to actively involve parents

and families in supporting the academic work of their children at home and in providing parents with skills to advocate for their children at school.

20 U.S.C. § 5891

§ 5891. Waivers of statutory and regulatory requirements

(a) Waiver authority

(1) In general

Except as provided in subsection (c) of this section, the Secretary may waive any statutory or regulatory requirement applicable to any program or Act described in subsection (b) of this section for a State educational agency, local educational agency, or school if--

(A) and only to the extent that, the Secretary determines that such requirement impedes the ability of the State, or of a local educational agency or school in the State, to carry out the State or local improvement plan;

(B) the State educational agency has waived, or agrees to waive, similar requirements of State law;

(C) in the case of a statewide waiver, the State educational agency--

(i) provides all local educational agencies and parent organizations in the State with notice and an opportunity to comment on the State educational agency's proposal to seek a waiver; and

(ii) submits the local educational agencies' comments to the Secretary; and

(D) in the case of a local educational agency waiver, the local educational agency provides parents, community groups, and advocacy or civil rights groups with the opportunity to comment on the proposed waiver.

(2) Application

(A) (i) To request a waiver under paragraph (1), a local educational agency or school that receives funds under this subchapter, or a local educational agency or school that does not receive funds under this subchapter but is undertaking school reform efforts that the Secretary determines are comparable to the activities described in section 5886 of this title, shall transmit an application for such a waiver to the State educational agency. The State educational agency then shall submit approved applications for waivers under paragraph (1) to the Secretary.

(ii) A State educational agency that receives funds under this subchapter may request a waiver under paragraph (1) by submitting an application for such waiver to the Secretary.

(B) Each application submitted to the Secretary under subparagraph (A) shall--

(i) identify the statutory or regulatory requirements that are requested to be waived and the goals that the State educational agency or local educational agency or school intends to achieve;

(ii) describe the action that the State educational agency has undertaken to remove State statutory or regulatory barriers identified in the application of local educational agencies;

(iii) describe the goals of the waiver and the expected programmatic outcomes if the request is granted;

(iv) describe the numbers and types of students to be impacted by such waiver;

(v) describe a timetable for implementing a waiver; and

(vi) describe the process the State educational agency will use to monitor, on a biannual basis, the progress in implementing a waiver.

(3) Timeliness

The Secretary shall act promptly on a request for a waiver under paragraph (1) and shall provide a written statement of the reasons for granting or denying such request.

(4) Duration

Each waiver under paragraph (1) shall be for a period not to exceed 4 years. The Secretary may extend such period if the Secretary determines that the waiver has been effective in enabling the State or affected local educational agencies to carry out reform plans.

(b) Included programs

The statutory or regulatory requirements subject to the waiver authority of this section are any such requirements under the following programs or Acts:

(1) Title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 6301 et seq.].

(2) Part A of title II of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 6621 et seq.].

(3) Part A of title V of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 7201 et seq.].

(4) Title VIII of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 7701 et seq.].

(5) Part B of the title IX of the Elementary and Secondary Education Act of 1986 [20 U.S.C.A. § 7901 et seq.].

(6) The Carl D. Perkins Vocational and Applied Technology Education Act [20 U.S.C.A. § 2301 et seq.].

(c) Waivers not authorized

The Secretary may not waive any statutory or regulatory requirement of the programs or Acts described in subsection (b) of this section--

(1) relating to--

(A) maintenance of effort;
(B) comparability of services;
(C) the equitable participation of students and professional staff in private schools;
(D) parental participation and involvement; and
(E) the distribution of funds to States or to local educational agencies; and

(2) unless the underlying purposes of the statutory requirements of each program or Act for which a waiver is granted continue to be met to the satisfaction of the Secretary.

(d) Termination of Waivers

The Secretary shall periodically review the performance of any State, local educational agency, or school for which the Secretary has granted a waiver under subsection (a)(1) of this section and shall terminate the waiver if the Secretary determines that the performance of the State, the local educational agency, or the school in the area affected by the waiver has been inadequate to justify a continuation of the waiver.

(e) Flexibility demonstration

(1) Short title

This subsection may be cited as the "Education Flexibility Partnership Demonstration Act".

(2) Program authorized

(A) In general

The Secretary may carry out an education flexibility demonstration program under which the Secretary authorizes not more than 6 State educational agencies serving eligible States to waive statutory or regulatory requirements applicable to 1 or more programs or Acts described in subsection (b) of this section, other than requirements described in subsection (c) of this section, for the State educational agency or any local educational agency or school within the State.

(B) Award rule

In carrying out subparagraph (A), the Secretary shall select for participation in the demonstration program described in subparagraph (A) three State educational agencies serving eligible States that each have a population of 3,500,000 or greater and three State educational agencies serving eligible States that each have a population of less than 3,500,000, determined in accordance with the most recent decennial census of the population performed by the Bureau of the Census.

(C) Designation

Each eligible State participating in the demonstration program described in subparagraph (A) shall be known as an "Ed-Flex Partnership State".

(3) Eligible State

For the purpose of this subsection the term "eligible State" means a State that--

(A) has developed a State improvement plan under section 5886 of this title that is approved by the Secretary; and

(B) waives State statutory or regulatory requirements relating to education while holding local educational agencies or schools within the State that are affected by such waivers accountable for the performance of the students who are affected by such waivers.

(4) State application

(A) Each State educational agency desiring to participate in the education flexibility demonstration program under this subsection shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require. Each such application shall demonstrate that the eligible State has adopted an educational flexibility plan for the State that includes--

(i) a description of the process the State educational agency will use to evaluate applications from local educational agencies or schools requesting waivers of--

(I) Federal statutory or regulatory requirements described in paragraph (2)(A); and

(II) State statutory or regulatory requirements

relating to education; and

(ii) a detailed description of the State statutory and regulatory requirements relating to education that the State educational agency will waive.

(B) The Secretary may approve an application described in subparagraph (A) only if the Secretary determines that such application demonstrates substantial promise of assisting the State educational agency and affected local educational agencies and schools within such State in carrying out comprehensive educational reform and otherwise meeting the purposes of this chapter, after considering--

(i) the comprehensiveness and quality of the educational flexibility plan described in subparagraph (A);

(ii) the ability of such plan to ensure accountability for the activities and goals described in such plan;

(iii) the significance of the State statutory or regulatory requirements relating to education that will be waived; and

(iv) the quality of the State educational agency's process for approving applications for waivers of Federal statutory or regulatory requirements described in paragraph (2)(A)

and for monitoring and evaluating the results of such waivers.

(5) Local application

(A) Each local educational agency or school requesting a waiver of a Federal statutory or regulatory requirement described in paragraph (2)(A) and any relevant State statutory or regulatory requirement from a State educational agency shall submit an application to the State educational agency at such time, in such manner, and containing such information as the State educational agency may reasonably require. Each such application shall--

(i) indicate each Federal program affected and the statutory or regulatory requirement that will be waived;

(ii) describe the purposes and overall expected results of waiving each such requirement;

(iii) describe for each school year specific, measurable, educational goals for each local educational agency or school affected by the proposed waiver; and

(iv) explain why the waiver will assist the local educational agency or school in reaching such goals.

(B) A State educational agency shall evaluate an application submitted under

subparagraph (A) in accordance with the State's educational flexibility plan described in paragraph (4)(A).

(C) A State educational agency shall not approve an application for a waiver under this paragraph unless--

(i) the local educational agency or school requesting such waiver has developed a local reform plan that is applicable to such agency or school, respectively; and

(ii) the waiver of Federal statutory or regulatory requirements described in paragraph (2)(A) will assist the local educational agency or school in reaching its educational goals.

(6) Monitoring

Each State educational agency participating in the demonstration program under this subsection shall annually monitor the activities of local educational agencies and schools receiving waivers under this subsection and shall submit an annual report regarding such monitoring to the Secretary.

(7) Duration of Federal waivers

(A) The Secretary shall not approve the application of a State educational agency under paragraph (4) for a period exceeding 5 years, except that the Secretary may extend such period if the Secretary determines that such agency's authority to grant waivers has been

effective in enabling such State or affected local educational agencies or schools to carry out their local reform plans.

(B) The Secretary shall periodically review the performance of any State educational agency granting waivers of Federal statutory or regulatory requirements described in paragraph (2)(A) and shall terminate such agency's authority to grant such waivers if the Secretary determines, after notice and opportunity for hearing, that such agency's performance has been inadequate to justify continuation of such authority.

(f) Accountability

In deciding whether to extend a request for a waiver under subsection (a)(1) of this section, or a State educational agency's authority to issue waivers under subsection (e) of this section, the Secretary shall review the progress of the State educational agency, local educational agency, or school affected by such waiver or authority to determine if such agency or school has made progress toward achieving the desired results described in the application submitted pursuant to subsection (a)(2)(B)(iii) or (e)(5)(A)(ii) of this section.

(g) Publication

A notice of the Secretary's decision to grant waivers under subsection (a)(1) of this section and to authorize State educational agencies to issue waivers under subsection (e) of this section shall be published in the Federal Register and the Secretary shall provide for the dissemination of such notice to

State educational agencies, interested parties, including educators, parents, students, advocacy and civil rights organizations, other interested parties, and the public.

20 U.S.C. § 6301

§ 6301. Declaration of policy and statement of purpose

(a) Statement of policy

(1) In general

The Congress declares it to be the policy of the United States that a high-quality education for all individuals and a fair and equal opportunity to obtain that education are a societal good, are a moral imperative, and improve the life of every individual, because the quality of our individual lives ultimately depends on the quality of the lives of others.

(2) Additional policy

The Congress further declares it to be the policy of the United States to expand the program authorized by this subchapter over the fiscal years 1996 through 1999 by increasing funding for this subchapter by at least $750,000,000 over baseline each fiscal year and thereby increasing the percentage of eligible children served in each fiscal year with the intent of serving all eligible children by fiscal year 2004.

(b) Recognition of need

The Congress recognizes that --

(1) although the achievement gap between disadvantaged children and other children has been reduced by half over the past two decades, a sizable gap remains, and many segments of our society lack the opportunity to become well educated;

(2) the most urgent need for educational improvement is in schools with high concentrations of children from low-income families and achieving the National Education Goals will not be possible without substantial improvement in such schools;

(3) educational needs are particularly great for low-achieving children in our Nation's highest-poverty schools, children with limited English proficiency, children of migrant workers, children with disabilities, Indian children, children who are neglected or delinquent, and young children and their parents who are in need of family-literacy services;

(4) while subchapter I of this chapter and other programs funded under this chapter contribute to narrowing the achievement gap between children in high-poverty and low-poverty schools, such programs need to become even more effective in improving schools in order to enable all children to achieve high standards; and

(5) in order for all students to master challenging standards in core academic subjects as described in the third National Education Goal described in section 5812(3) of this title, students and schools will need to maximize the time spent on teaching and learning the core academic subjects.

(c) What has been learned since 1988

To enable schools to provide all children a high-quality education, this subchapter builds upon the following learned information:

(1) All children can master challenging content and complex problem-solving skills. Research clearly shows that children, including low-achieving children, can succeed when expectations are high and all children are given the opportunity to learn challenging material.

(2) Conditions outside the classroom such as hunger, unsafe living conditions, homelessness, unemployment,

violence, inadequate health care, child abuse, and drug and alcohol abuse can adversely affect children's academic achievement and must be addressed through the coordination of services, such as health and social services, in order for the Nation to meet the National Education Goals.

(3) Use of low-level tests that are not aligned with schools' curricula fails to provide adequate information about what children know and can do and encourages curricula and instruction that focus on the low-level skills measured by such tests.

(4) Resources are more effective when resources are used to ensure that children have full access to effective high-quality regular school programs and receive supplemental help through extended-time activities.

(5) Intensive and sustained professional development for teachers and other school staff, focused on teaching and learning and on helping children attain high standards, is too often not provided.

(6) Insufficient attention and resources are directed toward the effective use of technology in schools and the role technology can play in professional development and improved teaching and learning.

(7) All parents can contribute to their children's success by helping at home and becoming partners with teachers so that children can achieve high standards.

(8) Decentralized decisionmaking is a key ingredient of systemic reform. Schools need the resources, flexibility, and authority to design and implement effective strategies for bringing their children to high levels of performance.

(9) Opportunities for students to achieve high standards can be enhanced through a variety of approaches such as public school choice and public charter schools.

(10) Attention to academics alone cannot ensure that all children will reach high standards. The health and other needs of children that affect learning are frequently unmet,

particularly in high-poverty schools, thereby necessitating coordination of services to better meet children's needs.

(11) Resources provided under this subchapter can be better targeted on the highest-poverty local educational agencies and schools that have children most in need.

(12) Equitable and sufficient resources, particularly as such resources relate to the quality of the teaching force, have an integral relationship to high student achievement.

(d) Statement of purpose

The purpose of this subchapter is to enable schools to provide opportunities for children served to acquire the knowledge and skills contained in the challenging State content standards and to meet the challenging State performance standards developed for all children. This purpose shall be accomplished by --

(1) ensuring high standards for all children and aligning the efforts of States, local educational agencies, and schools to help children served under this subchapter to reach such standards;

(2) providing children an enriched and accelerated educational program, including, when appropriate, the use of the arts, through schoolwide programs or through additional services that increase the amount and quality of instructional time so that children served under this subchapter receive at least the classroom instruction that other children receive;

(3) promoting schoolwide reform and ensuring access of children (from the earliest grades) to effective instructional strategies and challenging academic content that includes intensive complex thinking and problem-solving experiences;

(4) significantly upgrading the quality of isntruction by providing staff in participating schools with substantial opportunities for professional development;

(5) coordinating services under all parts of this subchapter with each other, with other educational services, and, to the extent feasible, with health and social service programs funded from other sources;

(6) affording parents meaningful opportunities to participate in the education of their children at home and at school;

(7) distributing resources, in amounts sufficient to make a difference, to areas and schools where needs are greatest;

(8) improving accountability, as well as teaching and learning, by using State assessment systems designed to measure how well children served under this subchapter are achieving challenging State student performance standards expected of all children; and

(9) providing greater decisionmaking authority and flexibility to schools and teachers in exchange for greater responsibility for student performance.

20 U.S.C. § 6311

§ 6311. State plans

(a) Plans required

(1) In general

Any State desiring to receive a grant under this part shall submit to the Secretary a plan, developed in consultation with local educational agencies, teachers, pupil services personnel, administrators, other staff, and parents, that satisfies the requirements of this section and that is coordinated with other programs under this chapter, the Goals 2000: Educate America Act [20 U.S.C.A. § 5801 et seq.], and other Acts, as appropriate, consistent with section 8856 of this title.

(2) Consolidation plan

A State plan submitted under paragraph (1) may be submitted as part of a consolidation plan under section 8852 of this title.

(b) Standards and assessments

(1) Challenging standards

(A) Each State plan shall demonstrate that the State has developed or adopted challenging content standards and challenging student performance standards that will be used by the State, its local educational agencies, and its schools to carry out this part, except that a State shall not be required to submit such standards to the Secretary.

(B) If a State has State content standards or State student performance standards developed under Title III of the Goals 2000: Educate America Act [20 U.S.C.A. § 5881 et seq.]

and an aligned set of assessments for all students developed under such title, or, if not developed under such title, adopted under another process, the State shall use such standards and assessments, modified, if necessary, to conform with the requirements of subparagraphs (A) and (D) of this paragraph, and paragraphs (2) and (3).

(C) If a State has not adopted State content standards and State student performance standards for all students, the State plan shall include a strategy and schedule for developing State content standards and State student performance standards for elementary and secondary school children served under this part in subjects as determined by the State, but including at least mathematics and reading or language arts by the end of the one-year period described in paragraph (6), which standards shall include the same knowledge, skills, and levels of performance expected of all children.

(D) Standards under this paragraph shall include--

(i) challenging content standards in academic subjects that--

(I) specify what children are expected to know and be able to do;

(II) contain coherent and rigorous content; and

(III) encourage the teaching of advanced skills;

(ii) challenging student performance standards that--

(I) are aligned with the State's content standards;

(II) describe two levels of high performance, proficient and advanced, that determine how well children are mastering the

material in the State content standards; and

(III) describe a third level of performance, partially proficient, to provide complete information about the progress of the lower performing children toward achieving to the proficient and advanced levels of performance.

(E) For the subjects in which students will be served under this part, but for which a State is not required by subparagraphs (A), (B), and (C) to develop, and has not otherwise developed such standards, the State plan shall describe a strategy for ensuring that such students are taught the same knowledge and skills and held to the same expectations as are all children.

(2) Yearly progress

(A) Each State plan shall demonstrate, based on assessments described under paragraph (3), what constitutes adequate yearly progress of--

(i) any school served under this part toward enabling children to meet the State's student performance standards; and

(ii) any local educational agency that received funds under this part toward enabling children in schools receiving assistance under this part to meet the State's student performance standards.

(B) Adequate yearly progress shall be defined in a manner--

(i) that is consistent with guidelines established by the Secretary that result in continuous and substantial yearly

improvement of each local educational agency and school sufficient to achieve the goal of all children served under this part meeting the State's proficient and advanced levels of performance, particularly economically disadvantaged and limited English proficient children; and

(ii) that links progress primarily to performance on the assessments carried out under this section while permitting progress to be established in part through the use of other measures.

(3) Assessments

Each State plan shall demonstrate that the State has developed or adopted a set of high-quality, yearly student assessments, including assessments in at least mathematics and reading or language arts, that will be used as the primary means of determining the yearly performance of each local educational agency and school served under this part in enabling all children served under this part to meet the State's student performance standards. Such assessments shall--

(A) be the same assessments used to measure the performance of all children, if the State measures the performance of all children;

(B) be aligned with the State's challenging content and student performance standards and provide coherent information about student attainment of such standards;

(C) be used for purposes for which such assessments are valid and reliable, and be consistent with relevant, nationally recognized professional and technical standards for such assessments;

(D) measure the proficiency of students in the academic subjects in which a State has adopted challenging content and student performance standards and be administered at some time during--

(i) grades 3 and 5;

(ii) grades 6 throug 9; and

(iii) grades 10 through 12;

(E) involve multiple up-to-date measures of student performance, including measures that assess higher order thinking skills and understanding;

(F) provide for--

(i) the participation in such assessments of all students;

(ii) the reasonable adaptations and accommodations for students with diverse learning needs, necessary to measure the achievement of such students relative to State content standards; and

(iii) the inclusion of limited English proficient students who shall be assessed, to the extent practicable, in the language and form most likely to yield accurate and reliable information on what such students know and can do, to determine such students' mastery of skills in subjects other than English;

(G) include students who have attended schools in a local educational agency for a full academic year but have not attended a single school for a full academic year, however the performance of students who have attended more than one school in the local educational agency in any academic year shall be used only in determining the progress of the local educational agency;

(H) provide individual student interpretive and descriptive reports, which shall include scores, or other

information on the attainment of student performance standards; and

(I) enable results to be disaggregated within each State, local educational agency, and school by gender, by each major racial and ethnic group, by English proficiency status, by migrant status, by students with disabilities as compared to nondisabled students, and by economically disadvantaged students as compared to students who are not economically disadvantaged.

(4) Special rule

Assessment measures that do not meet the requirements of paragraph (3)(C) may be included as one of the multiple measures, if a State includes in the State plan information regarding the State's efforts to validate such measures.

(5) Language assessments

Each State plan shall identify the languages other than English that are present in the participating student population and indicate the languages for which yearly student assessments are not available and are needed. The State shall make every effort to develop such assessments and may request assistance from the Secretary if linguistically accessible assessment measures are needed. Upon request, the Secretary shall assist with the identification of appropriate assessment measures in the needed languages through the Office of Bilingual Education and Minority Languages Affairs.

(6) Standard and assessment development

(A) A State that does not have challenging State content standards and challenging State student performance standards, in at least mathematics and reading or language arts,

shall develop such standards within one year of receiving funds under this part after the first fiscal year for which such State receives such funds after October 20, 1994.

(B) A State that does not have assessments that meet the requirements of paragraph (3) in at least mathematics and reading or language arts shall develop and test such assessments within four years (one year of which shall be used for field testing such assessment), of receiving funds under this part after the first fiscal year for which such State receives such funds after October 20, 1994, and shall develop benchmarks of progress toward the development of such assessments that meet the requirements of paragraph (3), including periodic updates.

(C) The Secretary may extend for one additional year the time for testing new assessments under subparagraph (B) upon the request of the State and the submission of a strategy to correct problems identified in the field testing of such new assessments.

(D) If, after the one-year period described in subparagraph (A), a State does not have challenging State content and challenging student performance standards in at least mathematics and reading or language arts, a State shall adopt a set of standards in these subjects such as the standards and assessments contained in other State plans the Secretary has approved.

(E) If, after the four-year period described in subparagraph (B), a State does not have assessments, in at least mathematics and reading or language arts, that meet the requirement of paragraph (3), and is denied an extension under subparagraph (C), a State shall adopt an assessment that meets the requirement of paragraph (3) such as one contained in other State plans the Secretary has approved.

(7) Transitional assessments

(A) If a State does not have assessments that meet the requirements of paragraph (3) and proposes to develop such

assessments under paragraph (6)(B), the State may propose to use a transitional set of yearly statewide assessments that will assess the performance of complex skills and challenging subject matter.

(B) For any year in which a State uses transitional assessments, the State shall devise a procedure for identifying local educational agencies under paragraphs (3) and (7) of section 6317(d) of this title, and schools under paragraphs (1) and (7) of section 6317(c) of this title, that rely on accurate information about the academic progress of each such local educational agency and school.

(8) Requirement

Each State plan shall describe--

(A) how the State educational agency will help each local educational agency and school affected by the State plan develop the capacity to comply with each of the requirements of sections 6312(c)(1)(D), 6314(b), and 6315(c) of this title that is applicable to such agency or school; and

(B) such other factors the State deems appropriate to provide students an opportunity to achieve the knowledge and skills described in the challenging content standards adopted by the State.

(c) Other provisions to support teaching and learning

Each State plan shall contain assurances that--

(1)(A) the State educational agency will implement a system of school support teams under section 6318(c) of this title, including provision of necessary professional development for those teams;

(B) the State educational agency will work with other agencies, including educational service agencies or other

local consortia, and institutions to provide technical assistance to local educational agencies and schools to carry out the State educational agency's responsibilities under this part, including technical assistance in providing professional development under section 6320 of this title and technical assistance under section 6318 of this title; and

(C)(i) where educational service agencies exist, the State educational agency will consider providing professional development and technical assistance through such agencies; and

(ii) where educational service agencies do not exist, the State educational agency will consider providing professional development and technical assistance through other cooperative agreements such as through a consortium of local educational agencies;

(2) the State educational agency will notify local educational agencies and the public of the standards and assessments developed under this section, and of the authority to operate schoolwide programs, and will fulfill the State educational agency's responsibilities regarding local educational agency improvement and school improvement under section 6317 of this title, including such corrective actions as are necessary;

(3) the State educational agency will provide the least restrictive and burdensome regulations for local educational agencies and individual schools participating in a program assisted under this part;

(4) the State educational agency will encourage the use of funds from other Federal, State, and local sources for schoolwide reform in schoolwide programs under section 6314 of this title;

(5) the Committee of Practitioners established under section 6513(b) of this title will be substantially involved in the development of the plan and will continue to be involved in monitoring the plan's implementation by the State; and

(6) the State will coordinate activities funded under this part with school-to-work, vocational education, cooperative education and mentoring programs, and apprenticeship programs involving business, labor, and industry, as appropriate.

(d) Peer review and secretarial approval

(1) In general

The Secretary shall--

(A) establish a peer review process to assist in the review and recommendations for revision of State plans;

(B) appoint individuals to the peer review process who are representative of State educational agencies, local educational agencies, teachers, and parents;

(C) following an initial peer review, approve a State plan the Secretary determines meets the requirements of subsections (a), (b), and (c) of this section;

(D) if the Secretary determines that the State plan does not meet the requirements of subsection (a), (b), or (c) of this section, immediately notify the State of such determination and the reason for such determination;

(E) not decline to approve a State's plan before--

(i) offering the State an opportunity to revise its plan;

(ii) providing technical assistance in order to assist the State to meet the requirements under subsection (a), (b), and (c) of this section; and

(iii) providing a hearing; and

(F) have the authority to disapprove a State plan for not meeting the requirements of this part, but shall not have the authority to require a State, as a condition of approval of the State plan, to include in, or delete from, such plan one or more

specific elements of the State's content standards or to use specific assessment instruments or items.

(2) Withholding

The Secretary may withhold funds for State administration and activities under section 6318 of this title until the Secretary determines that the State plan meets the requirements of this section.

(e) Duration of plan

(1) In general

Each State plan shall--

(A) remain in effect for the duration of the State's participation under this part; and

(B) be periodically reviewed and revised by the State, as necessary, to reflect changes in the State's strategies and programs under this part.

(2) Additional information

If the State makes significant changes in its plan, such as the adoption of new State content standards and State student performance standards, new assessments, or a new definition of adequate progress, the State shall submit such information to the Secretary.

(f) Limitation on conditions

Nothing in this part shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school's specific instructional content or student performance standards

and assessments, curriculum, or program of instructions, as a condition of eligibility to receive funds under this part.

(g) Special rule

If the aggregate State expenditure by a State educational agency for the operation of elementary and secondary education programs in the State is less than such agency's aggregate Federal expenditure for the State operation of all Federal elementary and secondary education programs, then the State plan shall include assurances and specific provisions that such State will provide State expenditures for the operation of elementary and secondary education programs equal to or exceeding the level of Federal expenditures for such operation by October 1, 1998.

(h) Redesignated (g)

20 U.S.C. § 6317(d)

§ 6317. Assessment and local educational agency and school improvement

. . .

(d) State review and local educational agency improvement

(1) In general

A State educational agency shall--

(A) annually review the progress of each local educational agency receiving funds under this part to determine whether schools receiving assistance under this part are making adequate progress as defined in section 6311(b)(2)(A)(ii) of this title toward meeting the State's student performance standards; and

(B) publicize and disseminate to local educational agencies, teachers and other staff, parents, students, and the community the results of the State review, including statistically sound disaggregated results, as required by section 6311(b)(3)(I) of this title.

(2) Rewards

In the case of a local educational agency that for three consecutive years has met or exceeded the State's definition of adequate progress as defined in section 6311(b)(2)(A)(ii) of this title, the State may make institutional and individual rewards of the kinds described for individual schools in paragraph (2) of section 6318(c) of this title.

(3) Identification

(A) A State educational agency shall identify for improvement any local educational agency that--

(i) for two consecutive years, is not making adequate progress as defined in section 6311(b)(2)(A)(ii) of this title in schools served under this part toward meeting the State's student performance standards, except that schools served by the local educational agency that are operating targeted assistance programs may be reviewed on the basis of the progress of only those students served under this part; or

(ii) has failed to meet the criteria established by the State through such State's transitional procedure under section 6311(b)(7)(B) of this title for two consecutive years.

(B) Before identifying a local educational agency for improvement under paragraph (1), the State educational agency shall provide the local educational agency with an opportunity to review the school-level data, including assessment data, on which such identification is based. If the local educational agency believes that such identification for improvement is in error due to statistical or other substantive reasons, such local educational agency may provide evidence to the State educational agency to support such belief.

(4) Local educational agency revisions

(A) Each local educational agency identified under paragraph (3) shall, in consultation with schools, parents, and educational experts, revise its local educational agency plan

under section 6312 of this title in ways that have the greatest likelihood of improving the performance of schools served by the local educational agency under this part in meeting the State's student performance standards.

(B) Such revision shall include determining why the local educational agency's plan failed to bring about increased achievement.

(5) State educational agency responsibility

(A) For each local educational agency identified under paragraph (3), the State educational agency shall--

(i) provide technical or other assistance, if requested, as authorized under section 6318 of this title, to better enable the local educational agency to--

(I) develop and implement the local educational agency's revised plan; and

(II) work with schools needing improvement; and

(ii) make available to the local educational agencies farthest from meeting the State's standards, if requested, assistance under section 6318 of this title.

(B) Technical or other assistance may be provided by the State educational agency directly, or by an institution of higher education, a private nonprofit organization, an educational service agency or other local consortium, a technical assistance center, or other entities with experience in assisting local educational agencies improve achievement, and may include--

(i) interagency collaborative agreements between the local educational agency

and other public agencies to provide health, pupil services, and other social services needed to remove barriers to learning; and

(ii) waivers or modification of requirements of State law or regulation (in States in which such waivers are permitted) that impede the ability of a local educational agency to educate students.

(6) Corrective action

(A) Except as provided in subparagraph (C), after providing technical assistance pursuant to paragraph (5) and taking other remediation measures, the State educational agency may take corrective action at any time against a local educational agency that has been identified under paragraph (3), but, during the fourth year following identification under paragraph (3), shall take such action against any local educational agency that still fails to make adequate progress.

(B)(i) Corrective actions are those actions, consistent with State law, determined and made public and disseminated by the State educational agency, which may include--

(I) the withholding of funds;

(II) reconstitution of school district personnel;

(III) removal of particular schools from the jurisdiction of the local educational agency and establishment of alternative arrangements for public governance and supervision of such schools;

(IV) appointment by the State educational agency of a receiver

or trustee to administer the affairs of the local educational agency in place of the superintendent and school board;

(V) the abolition or restructuring of the local educational agency;

(VI) the authorizing of students to transfer from a school operated by one local educational agency to a school operated by another local educational agency; and

(VII) a joint plan between the State and the local educational agency that addresses specific elements of student performance problems and that specifies State and local responsibilities under the plan.

(VIII) Redesignated (VII)

(ii) Notwithstanding clause (i), corrective actions taken pursuant to this part shall not include the actions described in subclauses (I), (II), and (III) of clause (i) until the State has developed assessments that meet the requirements of paragraph (3)(C) of section 6311(b) of this title.

(C) Prior to implementing any corrective action, the State educational agency shall provide due process and a hearing (if State law provides for such due process and a hearing) to any local educational agency identified under paragraph (3) and may refrain from such corrective action for one year after the four-year period described in subparagraph (A) to the extent that the failure to make progress can be

attributed to such extenuating circumstances as determined by the State educational agency.

(7) Special rule

Local educational agencies that for at least two of the three years following identification under paragraph (3) make adequate progress toward meeting the State's standards no longer need to be identified for local educational agency improvement.

42 U.S.C. § 1973c

§ 1973c. Alteration of voting qualifications and procedures; action by State or political subdivision for declaratory judgment of no denial or abridgement of voting rights; three-judge district court; appeal to Supreme Court

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote

for failure to comply with such qualification, prerequisite, standard, practice, or procedure: Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

TEX. EDUC. CODE ANN. § 11.059

§ 11.059 Terms

(a) A trustee of an independent school district serves a term of three or four years.

(b) Elections for trustees with three-year terms shall be held annually. The terms of one-third of the trustees, or as near to one-third as possible, expire each year.

(c) Elections for trustees with four-year terms shall be held biennially. The terms of one-half of the trustees, or as near to one-half as possible, expire every two years.

(d) A board policy must state the schedule on which specific terms expire.

Text of subsec. (e) effective until August 31, 2001

(e) A district in which trustees serve three-year or four-year terms as of January 1, 1995, continues to elect trustees under that system. The board of trustees of a district in which trustees are elected to two-year or six-year terms shall adopt a resolution providing for three-year or four-year terms. After adoption of the resolution, the board may not alter the length of the terms served by district trustees. The transition to three-year or four-year terms begins with the first regular election held after September 1, 1995. Trustees in office on September 1, 1995, shall serve for the remainder of their terms. The resolution must specify the manner in which the transition to staggered three-year or four-year terms is made. The resolution may provide for trustees elected during the transition to draw lots to determine which trustee serves for less than a full term or may specify which position in an election is for less than a full term. This subsection expires August 31, 2001.

TEX. EDUC. CODE ANN. § 39.131(a) and (e)

§ 39.131. Sanctions

(a) If a district does not satisfy the accreditation criteria, the commissioner shall take any of the following actions, listed in order of severity, to the extent the commissioner determines necessary:

(1) issue public notice of the deficiency to the board of trustees;

(2) order a hearing conducted by the board of trustees of the district for the purpose of notifying the public of the unacceptable performance, the improvements in performance expected by the agency, and the sanctions that may be imposed under this section if the performance does not improve;

(3) order the preparation of a student achievement improvement plan that addresses each academic excellence indicator for which the district's performance is unacceptable, the submission of the plan to the commissioner for approval, and implementation of the plan;

(4) order a hearing to be held before the commissioner or the commissioner's designee at which the president of the board of trustee of the district and the superintendent shall appear and explain the district's low performance, lack of improvement, and plans for improvement;

(5) arrange an on-site investigation of the district;

(6) appoint an agency monitor to participate in and report to the agency on the activities of the board of trustees or the superintendent;

(7) appoint a master to oversee the operations of the district;

(8) appoint a management team to direct the operations of the district in areas of unacceptable performance

or require the district to obtain certain services under a contract with another person;

(9) if a district has been rated as academically unacceptable for a period of one year or more, appoint a board of managers composed of residents of the district to exercise the powers and duties of the board of trustees; or

(10) if a district has been rated as academically unacceptable for a period of two years or more, annex the district to one or more adjoining districts under Section 13.054 or in the case of a home-rule school district, request the State Board of Education to revoke the district's home-rule school district charter.

. . .

(e) The commissioner shall clearly define the powers and duties of a master or management team appointed to oversee the operations of the district. At least every 90 days, the commissioner shall review the need for the master or management team and shall remove the master or management team unless the commissioner determines that continued appointment is necessary for effective governance of the district or delivery of instructional services. A master or management team, if directed by the commissioner, shall prepare a plan for the implementation of action under Subsection (a)(9) or (10). The master or management team:

(1) may direct an action to be taken by the principal of a campus, the superintendent of the district, or the board of trustees of the district;

(2) may approve or disapprove any action of the principal of a campus, the superintendent of the district, or the board of trustees of the district;

(3) may not take any action concerning a district election, including ordering or canceling an election or altering the date of or the polling places for an election;

(4) may not change the number of or method of selecting the board of trustees;

(5) may not set a tax rate for the district; and

(6) may not adopt a budget for the district that provides for spending a different amount, exclusive of required debt service, from that previously adopted by the board of trustees.

. . .